

This letter provides information regarding Retailers' Occupation Tax collection obligation of Marketplace Facilitators. See 86 Ill. Adm. Code 131. (This is a GIL.)

November 17, 2023

NAME
COMPANY
ADDRESS

RE: Marketplace Facilitators

Dear NAME:

This letter is in response to your letter dated April 28, 2023, in which you requested information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I represent a company located outside of Illinois ("Company") and, on behalf of Company, am requesting a General Information Letter regarding the tax treatment in the scenario described below.

FACTS

Company is incorporated in the State of STATE. Company manages a mobile app for independent owner-operator truck drivers and for small fleets (collectively, the "operator(s)"). The app is free to download, free to use after download, and otherwise does not charge any fees.

The app allows operators to purchase fuel at a discounted price from specified fuel stops. The fuel is available to operators at a discounted price because Company partners with fuel stops, who want to

earn more business from operators and who are willing to sell the fuel to operators at a discounted price.

Operators interested in the discounted fuel price must download the app. When an operator stops at a qualifying stop, which has partnered with Company, the operator opens the app and selected [sic] the fuel stop where they are purchasing fuel.

The app then generates a fuel code, which is a numeric code unique to that operator and that fuel stop. The operator shows the code to the fuel stop clerk, who verifies the operator has the Company's app. From there, the pump is turned on for the operator to pump the fuel. Once the fuel is pumped, the app charges the debit or credit card on file, and the operator can either obtain an emailed receipt or paper receipt from the stop.

Although the app provides operators with access to discounted fuel, Company does not sell fuel to operators. Rather, the fuel stops sell fuel to the operators and receive the proceeds from the sale. The fuel stops also pay all applicable fuel tax on a per gallon basis; and collect, report, and remit all applicable sales tax. Company makes its money solely on commissions paid by the fuel stops when operators use the app to purchase fuel from the stop.

Moreover, Company does not purchase fuel, does not distribute fuel; does not receive fuel; does not import fuel; does not supply fuel; does not use fuel; and does not produce, refine, blend, compound, or manufacture fuel. Nor does Company maintain or possess any inventory of fuel in storage.

REQUEST

Illinois imposes a sales tax on motor fuel, which is imposed on any person engaged in the business of selling motor fuel. 35 ILCS 120/2d; 55 ILCS 5/5-1035.1; 65 ILCS 5/8-11-2/3. Company does not appear to be liable for sales tax under this statutory provision because Company is not engaged in the business of selling motor fuel in Illinois.

Moreover, Illinois provides that a "marketplace facilitator" is liable for sales and use tax. 35 ILCS 120/1. A "marketplace facilitator" is "a person, who, pursuant to an agreement with an unrelated third-party marketplace seller, directly or indirectly through one or more affiliates facilitates a retail sale by an unrelated third-party marketplace seller by" listing or advertising items for sale and collects payment from the customer and transmits that payment to the marketplace seller. 35 ILCS

120/1. A “marketplace seller” is defined as “a person that makes sales through a marketplace operated by an unrelated third party marketplace facilitator.” 35 ILCS 120/1.

Company does not appear to be liable as a “marketplace facilitator” because Company is providing a service to fuel stops by advertising their fuel. The fuel stops provide and sell the motor fuel to operators, and collect, report, and remit all applicable sales tax.

Nevertheless, please advise whether the Department believes Company is liable for sales and use tax, Company is responsible for remitting sales and use tax, and Company is required to obtain any state licenses for sales and use tax.

CONCLUSION

Your advice on this matter is greatly appreciated. If you should have any questions, please do not hesitate to call me at PHONE.

DEPARTMENT’S RESPONSE:

The Retailers’ Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property at retail to purchasers for use or consumption. See 86 Ill. Adm. Cod 130.101. Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as “sales tax” in Illinois. Purchases of tangible personal property are subject to Illinois sales tax unless a purchase qualifies for an exemption under Illinois law.

A marketplace is a physical or electronic place, forum, platform, application, or other method by which a marketplace seller sells or offers to sell items. See 35 ILCS 120/1; 86 Ill. Adm. Code 131.105. A marketplace facilitator is a person who, pursuant to an agreement with an unrelated third-party marketplace seller, directly or indirectly through one or more affiliates, facilitates a retail sale by an unrelated third-party marketplace seller by listing or advertising for sale, by the marketplace seller in a marketplace, tangible personal property that is subject to tax under the Retailers’ Occupation Tax Act; and either directly or indirectly, through agreements or arrangements with third parties, collecting payment from the customer and transmitting that payment to the marketplace seller regardless of whether the marketplace facilitator receives compensation or other consideration in exchange for its services. See 35 ILCS 120/1; 86 Ill. Adm. Code 131.105. A marketplace seller is a person who makes sales through a marketplace operated by an unrelated third-party marketplace facilitator

and who has obtained a certification from the marketplace facilitator as provided in Section 131.145. See 35 ILCS 120/1; 86 Ill. Adm. Code 131.105.

Beginning January 1, 2021, a marketplace facilitator, as defined above, is considered a retailer engaged in the occupation of selling at retail in Illinois for purposes of the Retailers' Occupation Tax Act if either of following thresholds is met:

- 1) The cumulative gross receipts from sales of tangible personal property to purchasers in Illinois made through the marketplace by the marketplace facilitator and by marketplace sellers are \$100,000 or more; or
- 2) The marketplace facilitator and marketplace sellers selling through the marketplace cumulatively enter into 200 or more separate transactions for the sale of tangible personal property to purchasers in Illinois.

See 86 Ill. Adm. Code 131.135(a).

A marketplace facilitator meeting both of these thresholds, is required to register with the Department, file returns, and remit all applicable State and local retailers' occupation taxes administered by the Department for all sales made over the marketplace to Illinois purchasers, including their own sales and sales made on behalf of marketplace sellers. See 86 Ill. Adm. Code 131.145(a) and 131.145(c). Further, marketplace facilitators are subject to audit on all such sales. Section 131.145(c)

Generally, a marketplace seller is not liable for State and local retailers' occupation taxes for sales of tangible personal property sold to Illinois purchasers through a marketplace. See 86 Ill. Adm. Code 131.145(b) and 131.150(a). The marketplace facilitator would be liable for the applicable taxes on these sales unless the marketplace seller provides it with incorrect information. See Section 131.145(d). The Department is prohibited from collecting State and local retailers' occupation taxes from both the marketplace facilitator and the marketplace seller on the same transaction. See 35 ILCS 120/2(h); 86 Ill. Adm. Code 131.145(k); 86 Ill. Adm. Code 131.150(h).

Please note that the rules established under 86 Ill. Adm. Code 131 apply only to the remittance of State Retailers' Occupation Tax and local retailers' occupation taxes administered by the Department. Marketplace sellers that incur other taxes or fees administered by the Department, or other taxes not administered by the Department, remain liable for the remittance of those taxes to the Department or other taxing authority. See 86 Ill. Adm. Code 131.107(c).

Recently, the Department has encountered a number of arrangements where companies are providing new services to established businesses through the use of apps downloaded on mobile devices of consumers seeking, for example, hotel rooms,

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vacation rentals, and parking spaces. Because these new arrangements are unique, the Department requires a complete and thorough explanation of the contractual relationship between the parties.

Based on the limited information provided in your letter, the Department cannot determine the exact nature the arrangement between a fuel stop and the Company. Your letter states that, “[o]nce the fuel is pumped, the app charges the debit card or credit card on file”. Your letter also states the fuel stops receive the proceeds from the sale. As noted above, without reviewing the actual contractual arrangements between the Company and the fuel stops, the Department cannot provide an opinion in a GIL whether the Company is liable for remitting sales and use tax or Company is required to register for sales and use tax.

You may submit a request for a binding private letter ruling. Please review the requirements for obtaining a private letter ruling at 2 Ill. Adm. Code 1200.110.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department’s Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Richard S. Wolters
Associate Counsel

RSW:dlb